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**E-filed on May 26, 2006.**

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC.,  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC.,  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND,  
LLC.,  
Debtor.

In re:  
USA SECURITIES, LLC.,  
Debtor.

Affects:  
☐ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

Chapter 11

**Jointly Administered Under  
Case No. BK-S-06-10725-LBR**

Date: June 5, 2006  
Time: 9:30 a.m.

**LIMITED OPPOSITION OF THE  
MCKNIGHT 2000 FAMILY  
TRUST TO APPLICATION BY  
THE OFFICIAL INVESTOR  
COMMITTEE TO EMPLOY  
STUTMAN, TREISTER &  
GLATT P.C. AS COUNSEL FOR  
MATTERS OF COMMON  
INTEREST**

1 Richard McKnight, Esq., Co-Trustee of the McKnight 2000 Family Trust, opposes the  
 2 Application By The Official Investors Committee To Employ Stutman, Treister & Glatt, P.C.,  
 3 As Counsel for Matters Of Common Interest and submits the following:

4 A. 11 U.S.C. §1103(b) Prohibits Counsel For A Creditor Committee From  
 5 Representing Conflicting Interests.

6 11 U.S.C. §1103(b) provides as follows:

7 An attorney or accountant employed to represent a committee appointed under  
 8 section 1102 of this title *may not, while employed by such committee, represent any other*  
 9 *entity having an adverse interest in the case.* Representation of one or more of the same  
 10 class shall not per se constitute the representation of an adverse interest.

11 (Emphasis added). A creditor committee's obligation is to act as a fiduciary to the class of  
 12 creditors it represents. *In re Caldor, Inc.* 193 B.R. 165 (NY Bkrcty.S.D.N.Y.,1996). Its principal  
 13 function "is to advise the creditors of their rights and the proper course of any actions in the  
 14 bankruptcy proceedings. *Bohack Corp. v. Gulf & Western Indus.*, 607 F.2d 258, 262 n. 4. ("[t]he  
 15 committee owes a fiduciary duty to the creditors, and must guide its actions so as to safeguard as  
 16 much as possible the rights of minority as well as majority creditors.").

17 The Debtor -In- Possession's pending Motion To Temporarily Hold Funds Pending A  
 18 Determination Of The Proper Recipients in this case asserts that the Debtor may seek to recover  
 19 funds from Direct Investors and that the debtor may have some 'equitable' interest in the loans  
 20 made by the Direct Investors. Further, in that motion, the Debtor states that 60% of the investors  
 21 were invested in more than one loan. The Debtor has also threatened to claim that the direct  
 22 investors made loans to the USACM rather than loans to particular borrowers. In addition, if the  
 23 Direct Lenders file claims in this action, their claims too would fall within the category of  
 24 "Holders of Executory Contract Rights Through USA Commercial Mortgage" whom Stutman,  
 25 Treister & Glatt Professional Corporation proposes to also represent.

26 The question of a single firm representing multiple creditor committees in a bankruptcy  
 27 was addressed in *Matter of Proof of the Pudding, Inc.*, 3 B.R. 645 (Bkrcty.N.Y., 1980). In that  
 28 case, the same firm sought to represent the three creditor committees that were appointed in a

1 consolidated case involving three debtor entities. The Court denied the employment applications  
2 with respect to two of the three committees because the various debtor entities had obligations  
3 from one debtor to another. In fact, in *TWI Intern., Inc. v. Vanguard Oil and Service Co.*  
4 162 B.R. 672 (S.D.N.Y.,1994), the court found that the existence of an actual conflict involving  
5 counsel for the debtor and creditor committees mandated disqualification:.

6           Given these parameters, courts hold that the determination of "disinterestedness"  
7 is a fact specific inquiry. In re BH & P Inc., 949 F.2d 1300, 1315 (3rd Cir.1991).  
8 Moreover, "merely hypothesizing that conflicts may arise is not a sufficient basis to  
9 warrant the disqualification" of an attorney. In re Stamford Color Photo, Inc., 98 B.R.  
10 135, 138 (Bankr.D.Conn.1989). Rather, "[d]isqualification should be mandated when an  
11 actual, as opposed to hypothetical or theoretical, conflict is present. This in no way  
12 precludes disqualification for a potential conflict. The test is merely one of a potential  
13 actual conflict." In re Wm. J. O'Connor, 52 B.R. 892, 897 (Bankr.W.D.Okl.1985).

14 *Id.*, at 675.

15           Under the circumstances presented here, the conflict between the interests of the Direct  
16 Investors, the parties represented by the First Trust Deed Committee, the Diversified Trust Deed  
17 Committee, and the committee claiming to represent the Holders of Executory Contracts could  
18 hardly be more concrete. That conflict has dominated the early proceedings in this case as  
19 evidenced by the several motions filed by direct investors . The conflict that exists between the  
20 various investors and the committees appointed by the United States Trustee is in fact the  
21 proverbial '800 pound gorilla' camped in the middle of the room. The suggestion that  
22 employment of 'Conflicts Counsel' will somehow alleviate the harm to the interests of the  
23 various parties itself demonstrates what is obvious to all - a single firm cannot realistically take  
24 any effective measure to insure that the interests of the various creditor committee are adequately  
25 protected.

## 26 CONCLUSION

27           The Court should deny the appointment of Stutman, Treister & Glatt, P.C., as  
28 counsel for more than one creditor committee. In the alternative, the Court should  
consider delaying appointment of outside counsel at least until the Debtor has been to  
able to file schedules or a statement of its affairs, as well as the accounting the Debtor

1 professes to need to evaluate potential claims against individual investors. Until such  
2 time, as those steps have been taken, the Court may well wish to avoid making decisions  
3 in a vacuum with respect to matters that are going to cost investors and the estate huge  
4 sums of money.

5 DATED this 26<sup>th</sup> day of May 2006

6 LAW OFFICES OF RICHARD McKNIGHT, P.C.

7  
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